IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 07 of 2006

Sunil Kumar Kashyap, son of Sri Dharam Dev Prasad, resident of Society Area, Subhash Nagar, Clementown, Dehradun, District – Dehradun.

……..Appellant

V e r s u s

Smt. Kirti, wife of Sri Sunil Kumar Kashyap, daughter of Sri Hari Ram Maurya, resident of Q – 126, Shivalik Nagar, Ranipur, Pargana – Jwalapur, District – Haridwar.

……Respondents

Sri N.C. Gupta, learned counsel for the appellant.
Sri Sanjeev Singh, learned counsel for respondent.

Coram:
Hon'ble M.M. Ghildiyal, J.
Hon'ble B. C. Kandpal, J.

Oral Judgment (Per Hon'ble B.C. Kandpal, J).

Heard Sri N.C. Gupta, learned counsel for the appellant and Sri Sanjeev Singh, who put an appearance on behalf of respondent.

Record reveals that the court below has framed additional issues nos. 4 and 5 on 20.11.2003 but the impugned judgment shows that the court below has not decided these issues. It appears that either it was not brought to the knowledge of the court below that additional issues had already been framed or due to ignorance it was skipped by the court below to decide the aforesaid issues. However, we are of the view that it would be in the interest of justice that the court below should decide the issues no. 4 and 5 after assessing the evidence.

In the aforesaid circumstances, we are of the opinion that the matter should be remanded for disposal of issue nos. 4 and 5. Accordingly, the appeal is allowed. The matter is remanded back to the court below for deciding the issue nos. 4 and 5 on merit.

The impugned judgment passed by the Principal Judge, Family Court, Dehradun in Matrimonial Case No. 526 of 2002 is hereby set aside. The Trial Court is directed to decide the additional issues no. 4 and 5 in the light of evidence on record expeditiously.

With this direction the appeal is finally disposed of. No order as to costs.

(B.C. Kandpal, J) **(M.M. Ghildiyal, J)**

February 14, 2006
SKSharma